
**LOCAL RULES OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE**

(Amended Effective January 1, 1995)

RULE 16.2. Initial Conference; Rule 16 Conference.

(a) **Initial Conference.** Within 45 days after service of process upon all defendants, the Court shall notify counsel of the time for holding an initial conference, which may be by telephone, at which time the Court and counsel will discuss: (i) the nature of the case; (ii) any special difficulties that counsel foresee in prosecution or defense of the case; (iii) a proposed date for the conference contemplated by Fed. R. Civ. P. 16(b); and (iv) any requests for modification of the time for the mandatory disclosure required by Fed. R. Civ. P. 16(b) and 26(f).

(b) **Rule 16 Scheduling Conference.** At the initial conference contemplated by subparagraph (a) hereof, the Court will schedule the pretrial conference required by Fed. R. Civ. P. 16(b). Matters to be considered at the Rule 16(b) conference will include, in addition to the items specified in Fed. R. Civ. P. 16(b) and 16(c), the following matters:

- (1) whether the case is complex;
- (2) for complex cases, the special issues set forth in D. Del. L.R. 16.1 (b) (3);
- (3) the possibility of settlement;
- (4) whether the matter could be resolved by voluntary mediation or binding arbitration;
- (5) the briefing practices to be employed in the case, including what matters are or are not to be briefed and the length of briefs; and
- (6) the schedule applicable to the case, including a trial date, if appropriate.

(c) **Trial Date.** Trial shall be scheduled to occur within 12 months, if practicable, and no later than 18 months, after the filing of the complaint, except if the Court certifies that, because of the complexity or demands of the case, the number or complexity of pending criminal cases, or otherwise, (i) such a trial date is incompatible with serving the ends of justice, or (ii) the trial cannot reasonably be held within that time.

(d) **Certification and Settlement Discussion.** Prior to the Rule 16 Scheduling Conference, counsel shall confer to discuss settlement and at the time of the conference shall certify to the

Court that they have done so.

(e) ***Attendance at Conference.*** Unless otherwise directed by the Court, the conference described in subparagraph (b) of this Rule will be an in-person conference. If out-of-town counsel are expected to have a significant role in the prosecution or defense of the case, it is expected that out-of-town counsel will attend the conference provided for by subparagraph (b) of this Rule.

Source: Implementation of ¶ 1(d) of the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the District of Delaware, effective December 23, 1991; implementation of Fed. R. Civ. P. 26 as amended in 1993.

RULE 16.3. Exemptions from Fed. R. Civ. p. 16(b) and 26(f).

The following categories of action are exempt from the scheduling conference and order requirement of Fed. R. Civ. P. 16(b), 26(f) and the initial conference requirement of Local Rule 16.2 (a).

- (a) all actions in which one of the parties appears pro se and is incarcerated;
- (b) all actions for judicial review of administrative decisions of government agencies or instrumentalities where the review is conducted on the basis of the administrative record;
- (c) prize proceedings, actions for forfeitures and seizures, for condemnation, or for foreclosure of mortgages or sales to satisfy liens of the United States;
- (d) bankruptcy appeals; provided, however, cases in which references are withdrawn by order of the District Court remain subject to the Rules;
- (e) for admission to citizenship or to cancel or revoke citizenship;
- (f) proceedings for habeas corpus or in the nature thereof, whether addressed to federal or state custody;
- (g) proceedings to compel arbitration or to confirm or set aside arbitration awards;
- (h) proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance;
- (i) proceedings to compel the giving of testimony or production of documents in this District in connection with discovery, or testimony de bene esse, or for perpetuation of testimony for use in a matter pending or contemplated in a U.S. District Court of another District;
- (j) proceedings for the temporary enforcement of orders of the National Labor Relations Board;
- (k) civil actions for recovery of erroneously paid educational assistance.

(1) proceedings for execution on a judgment pursuant to Fed. R. Civ. P. 64 or 69 or 28 U.S.C. Chapter 127.

Source: Former Delaware Local Rule 2.3 with revisions.

RULE 16.4. Pretrial Conference and Procedure.

(a) ***Pretrial Conference.*** Unless otherwise ordered all civil cases shall be set for a pretrial conference. Any party may apply for a pretrial conference to be held following the completion of discovery as provided in the pretrial order issued pursuant to Fed.R. Civ. P. 16(b), and D. Del. LR 72.1. Reasonable notice of the time and place of such pretrial conference shall be given by the Clerk of the Court by mail to counsel of record.

(b) ***Failure to Appear in Pretrial Conference or to Cooperate.*** Unless otherwise ordered, counsel who will conduct the trial are required to appear before the Court for the pretrial conference. Should an attorney for a party fail to appear therefor or to cooperate in the preparation of the pretrial order specified in paragraph (d) hereafter, the Court, in its discretion, may in addition to the imposition of sanctions as provided in D. Del. LR 1.3 of these Rules, hold a pretrial hearing, ex parte or otherwise, and, after notice, enter an appropriate judgment or order.

(c) ***Attorney Conference Prior to Pretrial Conference.*** Attorneys for all of the parties, before the pretrial conference, shall become thoroughly familiar with the case and shall confer with the other attorneys as long and as frequently as may be required to enable plaintiff's attorney to comply with paragraph (d) of this Rule and to permit each party to premark all exhibits. Unless otherwise ordered by the Court, at such conferences each attorney shall produce all documents, papers, books, accounts, letters, medical and doctors' reports, photostats, objects or other things proposed to be introduced in evidence, and, if requested, shall furnish copies to opposing counsel of documents, papers, etc., designated by opposing counsel, at the expense of the party represented by the opposing counsel. At the same time, each attorney shall consider and discuss all matters which may expedite the pretrial conference and the trial of the case. Nothing contained in this Rule shall

preclude the Court in its discretion from requiring any party to produce for the inspection of another such additional documents, papers, books, accounts, letters, medical and doctors' reports, photostats, objects and other matters as the Court deems appropriate.

(d) ***Pretrial Order.*** At least 3 business days prior to the pretrial conference, the attorney for the plaintiff shall file with the Clerk an original and one copy of a proposed pretrial order, signed by an attorney for each party, which will cover such of the following items as are appropriate:

(1) A statement of the nature of the action, the pleadings in which the issues are raised (for instance, third amended complaint and answer) and whether counterclaims, cross- claims, etc., are involved.

(2) The constitutional or statutory basis of federal jurisdiction, together with a brief statement of the facts supporting such jurisdiction.

(3) A statement of the facts which are admitted and require no proof.

(4) A statement of the issues of fact which any party contends remain to be litigated. This should be as detailed as circumstances permit; as, for instance, in a negligence case whether the brakes on plaintiff's vehicle were defective in that they had to be pumped several times to take hold at the time of the accident; whether plaintiff drove through a stop light; etc.

(5) A statement of the issues of law which any party contends remain to be litigated, and a citation of authorities relied upon by each party.

(6) A list of pre-marked exhibits, including designations of interrogatories and answers thereto, requests for admissions and responses, which each party intends to offer at the trial with a specification of those which will be admitted in evidence without objection, those that will be objected to and the Federal Rule of Evidence in support of said objection and the Federal Rule of Evidence relied upon by the proponent of the exhibit.

(7) The names and addresses of all witnesses a party intends to call to testify either in person, or by deposition, at the trial and the specialties of experts to be called as witnesses.

(8) A brief statement of what plaintiff intends to provide in support of plaintiffs' claims including the details of the damages claimed, or of other relief sought, as of the date of preparation of the draft order.

(9) A brief statement of what the defendant intends to prove as a defense.

(10) Statements by counterclaimants or cross-claimants comparable to that required of plaintiff.

(11) Any amendments of the pleadings desired by any party with a statement whether it is unopposed or objected to, and if objected to, the grounds therefor.

(12) A certification that two way communication has occurred between persons having authority in a good faith effort to explore the resolution of the controversy by settlement.

(13) Any other matters which the parties deem appropriate.

(14) The concluding paragraph of the draft of the pretrial order shall read:

This order shall control the subsequent course of the action unless modified by the Court to prevent manifest injustice.

Where the case is to be tried to a jury, counsel should look to D.Del.L. Rules 47 and 51 for guidance on filing proposed voir dire, jury instructions, special verdict forms, and interrogatories.

